

**Armatas v Maroulleti**

2011 NY Slip Op 33977(U)

November 7, 2011

Supreme Court, Queens County

Docket Number: 9500/2011

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
**Justice**

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PANAGIOTIS ARMATAS,	Index No.: 9500/2011
Plaintiff,	Motion Date: 08/18/2011
- against -	Motion No.: 6
ELENA MAROULLETI,	Motion Seq.: 1
Defendant.	

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The following papers numbered 1 to 19 were read on defendant's notice of motion for an order dismissing the complaint against defendant ELENA MAROULLETI pursuant to CPLR 3211(a)(4) on the ground that there is another action pending between the same parties for the same cause of action in the Federal Court:

Papers Numbered

Notice of Motion-Affidavits-Exhibits.....	1 - 6
Affirmation in Opposition-Affidavits-Exhibits.....	7 - 11
Reply affirmation.....	12 - 15
Sur-Reply.....	16 - 19

Plaintiff commenced the within action against ELENA MAROULLETI by filing a summons and complaint on April 18, 2011. The complaint asserts three causes of action, false arrest, malicious prosecution and falsification to authorities pursuant to Penal Law § 240.50. The underlying criminal complaint alleged that on July 31, 2006, plaintiff allegedly placed several threatening phone calls to the defendant's cell phone. The defendant reported the calls to the police and the plaintiff was arrested and taken to the police station along with his two children. Plaintiff was charged with Aggravated Harassment in the Second Degree. On August 8, 2007, the criminal charges were dismissed pursuant to CPL § 30.30 based upon Maroulletti's refusal

to cooperate.

Subsequently, on January 22, 2008, plaintiff commenced an action in the United States District Court, Eastern District of New York under case no. 08-CV-310(SJF)(RER) naming Elena Marouletti, The City Of New York, The New York City Police Department, Police Officers John Doe and Jane Doe as defendants. Plaintiff alleged a federal civil rights violation and also alleged state tort claims against defendants including false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress and falsification to authorities.

Plaintiff claimed that Marouletti falsely reported that he placed threatening phone calls and further alleged that the police failed to properly conduct any investigation resulting in his arrest on July 31, 2006. Plaintiff alleges that as a result he was detained against his will, jailed, and forced to attend court appearances over a 13 month period. Plaintiff claims that the defendant thereafter failed to appear in court to prosecute the criminal complaint.

The City defendants and Marouletti brought a motion for summary judgment in Federal Court seeking dismissal of the complaint. On October 22, 2010, Judge Feuerstein rendered a decision granting the motion and dismissing the complaint as to all constitutional claims against the police officers on the ground of qualified immunity and probable cause to arrest and dismissed the cause of action for falsification to authorities on the ground that there is no private right for civil action under Penal Law § 240.50. The Court declined to accept subject matter jurisdiction over the remaining state court claims.

Plaintiff appealed the decision to the Second Circuit Court of Appeals and also filed the instant action in State Supreme Court naming only Elena Marouletti as a defendant and stating three causes of action, false arrest, malicious prosecution and falsification to authorities.

On March 9, 2011, the Second Circuit Court of Appeals granted the plaintiff 120 days from the filing of the order to perfect an appeal. On June 23, 2011, plaintiff sought and received a further extension of time until October 9, 2011 to perfect the appeal.

In support of the instant motion to dismiss pursuant to CPLR 3211(a)(4), defendant's counsel contends that as a result of the pending appeal there are now two cases pending each requesting

the same relief, i.e money damages, and each alleging three of the same causes of action, to wit, false arrest, malicious prosecution and falsification to authorities. Counsel claims that although summary judgment was granted by the Federal Court and the civil rights claims dismissed, that the Federal case is still active as a result of the pending appeal and that as it is unlikely that there will a decision forthcoming in Federal Court before 2012. Counsel states that the within state court action should be dismissed as it would be a waste of judicial resources to prosecute this case when there is a possibility that the action may be reinstated in Federal Court after the appeal.

In opposition, plaintiff concedes that he appealed from the Federal Court order and judgment but states that the branch of the District Court's order not to retain subject matter jurisdiction over the state tort claims was not appealed from. Therefore, counsel contends that the causes of action for false arrest and malicious prosecution which are pending in the instant state action are not pending in the Second Circuit Court of Appeals. Counsel did, however, appeal the decision of the District Court to dismiss the cause of action for falsification to authorities the same cause of action that was also brought in state court. Counsel requests, therefore, that as there is no action pending against Marouletti in federal court for the state tort actions of malicious prosecution and false arrest that there is no basis to dismiss the entire action pursuant to CPLR 3211(a)(4). Counsel requests that as there are actions pending in both federal and state court for falsification to authorities, that said cause of action be stayed pending the resolution of the federal appeal.

"Pursuant to CPLR 3211(a)(4), a court has broad discretion in determining whether an action should be dismissed based upon another pending action where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same" (DAIJ, Inc. v Roth, 85 AD3d 959 [2d Dept. 2011]; also see Whitney v Whitney, 57 NY2d 731 [1982]; Kent Dev. Co. v Liccione, 37 NY2d 899 [1975]; Cherico, Cherico & Assoc. v Midollo, 67 AD3d 622 [2d Dept. 2009]; Liebert v TIAA-CREF, 34 AD3d 756 [2d Dept. 2006]).

Here, it is clear that the causes of action against Marouletti for malicious prosecution and false arrest are no longer pending in the federal court as the Federal District Court of New York determined not to assume jurisdiction of those claims and plaintiff did not appeal that determination. Both parties agree, however, that the claim for falsification to authorities under Penal Law § 240.50 as a civil action, is pending in both

courts. As a result, defendant's counsel requests that cause of action be stayed pending the determination of the federal appeal.

For all of the above stated reasons the defendant's motion to dismiss the plaintiff's complaint pursuant to CPLR 3211(a)(4) is denied. Defendant's application to stay the trial with respect to the cause of action for falsification to authorities is granted pending the determination of the federal appeal (see Rhinebeck Sav. Bank v Putnam County Temple & Jewish Ctr., 2011 NY Slip Op 6831[2d Dept. 2011]; AIG Fin. Prods. Corp. v Penncara Energy, LLC, 83 AD3d 495 [2d Dept. 2011]; Finger Lakes Racing Assn. v. New York Racing Assn., 28 AD3d 1208 [4<sup>th</sup> Dept. 2006]). In addition, this court finds that as one of the plaintiff's causes of action is stayed, and in consideration of orderly procedure and judicial economy it is appropriate that the trial of the entire action shall be stayed pending the determination of the appeal in the Second Circuit Court of Appeals (see Britt v Buffalo Mun. Hous. Auth., 63 AD3d 1593 [4<sup>th</sup> Dept. 2009]). All discovery shall, however proceed as required.

Dated: November 7, 2011  
Long Island City, N.Y.

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**ROBERT J. MCDONALD**  
**J.S.C.**